COMMISSIONER'S DECISION ON APPEAL FROM THE DIRECTOR'S SEPTEMBER 28, 2011 DENIAL OF AURORA GAS, LLC APPLICATION TO FORM THE COHOE UNIT

May 3, 2012

Findings and Decision of the Commissioner,
Department of Natural Resources,
State of Alaska

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I. INTRODUCTION AND SUMMARY OF THE DECISION

This is the final Decision of the Alaska Department of Natural Resources (DNR) on the appeal from the September 28, 2011 Director of the Division of Oil and Gas's (Director or Division) denial of Aurora Gas, LLC's (Aurora) application to form the Cohoe Unit. The Commissioner affirms the Director's September 28, 2011, decision and adopts and incorporates the decision's findings and rationale, except for where it is specifically noted.

II. BACKGROUND

A. Lease Background

Aurora, as operator and sole working interest owner, proposed forming the Cohoe Unit. The lands proposed for unitization included ADL 390364, ADL 390365, and CIRI lease C061621. The leases are located on the Kenai Peninsula, near the intersection of the Sterling Highway and Kalifonsky Beach Road near the community of Kasilof.

This acreage was originally acquired by Sun Oil Company on January 1, 1967. Sun Oil Company farmed out the lease to Union Oil Company of California (Unocal). Unocal shot seismic over the area in 1972 and drilled the Cohoe Unit #1 well in 1973.

The Cohoe Unit #1 well was a straight hole and was drilled to a depth of 15,683 feet. Nine zones were drill stem tested (DST). Six of the DSTs either failed or produced water. Three DSTs produced some gas: one DST produced muddy gas cut salt water; another produced slight gas cut water with sand; and a third, the Beluga DST, produced a small amount of gas along with formation water. This well was never certified as capable of producing in paying quantities and was plugged and abandoned in December 1973.

The lease with Cohoe Unit #1 terminated in 1975.

In the 2003 Cook Inlet Areawide lease sale, two tracts, CIA 2003-055 and CIA 2003-085, were acquired by two consortiums. The tracts were awarded as ADL 390364 and ADL 390365 with an effective date of October 1, 2003. On March 1, 2004, DNR approved the assignments of these leases to Aurora.

These leases have a primary term of seven years and were due to expire on September 30, 2010.

On August 17, 2006, Aurora entered into a lease agreement with CIRI for lands that are surrounded by ADL 390364. This lease (C-061621) is approximately 640 acres and has a primary term of five years. The CIRI lease was due to expire on August 17, 2011.

No party conducted exploration work on the three leases contained in Aurora's unit application over the past seven years. Aurora did, however, use "new seismic and log analysis

technology to re-examine the well data . . . and the seismic data acquired in 1972. No new seismic data has been collected in this area recently."

B. Procedural History

On July 21, 2010, just over two months prior to the expiration date of the two state leases, Aurora filed an application to form the Cohoe Unit with three leases comprising approximately 7,707 acres of state and CIRI land.[1]

At the time of the unit application, the leases were 100% owned by Aurora.

In support of its unit application, Aurora submitted geological, geophysical, engineering, and well data to the Division.[2] Aurora also submitted a Plan of Exploration (POE). The initial POE was subsequently revised by Aurora and proposed the following activities: re-entering the Cohoe Unit #1 well by December 31, 2011 to perforate selected horizons and perform production tests; completing 3-D geophysical exploration over the Cohoe Unit area by July 31, 2012; and, if the exploration work looked promising, Aurora would submit a Plan of Development (POD) for the installation of production facilities, pipelines, and future development wells by May 1, 2013.

The Division provided public notice of the proposed Cohoe Unit on June 17, 2011. The Division received one public comment.

Aurora did not conduct any exploration work while the unit application was pending.

The Director denied Aurora's unit application on September 28, 2011. The Director concluded that unitization was neither advisable to protect the public or state's interest because, in part, it is "not in the state's interest to allow Aurora to retain the leases and benefit from the lease term extensions provided by unitization without having demonstrated the need for unitization."[3]

Aurora appealed the Director's decision to the Commissioner on October 18, 2011, pursuant to 11 AAC 02. The appeal contained a four-page letter stating the reasons for the appeal and requested that its unit application be accepted. Attached to the letter were: (1) a six-page document explaining why the unit application satisfied the unitization criteria set out in 11 AAC 83.303; (2) the Division's decision denying the proposed Cohoe Unit application; and (3) the exhibits included with Aurora's unit application.

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[1] Under state law, DNR's review of Aurora's unit application stays the expiration of the state leases.

[2] By memorandum dated December 21, 1998, the DNR Commissioner delegated the authority under AS 38.05.180(p) and 11 AAC 83.303 – 11 AAC 83.398 to form units to the Director of the Division of Oil and Gas.

[3] *See* September 28, 2011, Decision from the Director of the Division of Oil and Gas's Denial of the Application to Form the Cohoe Unit (Director's Decision) at 3.

Aurora's appeal is supported by the following arguments[4]:

First, Aurora argues that adequate data "supporting the existence of a contiguous hydrocarbon bearing structure underlying separate and distinct leases issued by CIRI and State of Alaska was provided to the Division."[5]

Second, Aurora argues that the Division failed to take into consideration all parties of interest and did not adequately consider how this decision will impact CIRI's interests. Aurora asserts "unitization is the ***only way*** in which the leases can be developed in a manner that protects all interests."[6] Related to this point, Aurora explains that the Cohoe Unit #1 well "is on ADL 390364 but is literally within 20 feet of the boundary between this lease and C-06162 [the CIRI lease]."[7]

Third, Aurora contends that the Division did not adequately consider how unitization will prevent economic and environmental waste.

Fourth, Aurora argues that unitization and Aurora's proposed work commitments are in the state's interest because its work plans will efficiently bring the leases into timely development. Aurora explains that it is willing to "put these leases on an immediate development schedule at a time when bringing additional reserves to the market in Cook Inlet is more critical than ever.... These facts put [u]nitization clearly within the State's best interests."[8] Aurora adds that the state will receive long term benefits by unitizing these leases under its work plan because the state will receive royalty and tax income, local gas supplies and long term jobs. Aurora also notes that, without unitizing its leases, development will be delayed.

Fifth, Aurora argues that the Division erred by allegedly asserting that a unitization application needs to include an Alaska Oil and Gas Conservation Commission (AOGCC) drill permit.

Finally, Aurora argues that the Division has recently changed its unitization policy and now no longer allows for "exploration" units. Aurora believes this view is shortsighted because it allows acreage to expire when there is no guarantee that anyone will acquire the leases and develop them. Aurora concludes that the "Division's new policy runs counter to over 40 years of past practice by the Division and its predecessor agencies."[9]

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4 Although in Aurora's appeal papers it lists four reasons for its appeal, the appeal document contains at least six independent reasons.

5 Aurora's October 18, 2011, Appeal of the Decision at 2.

6 *Id.* (emphasis in original)

7 *Id.* (emphasis in original).

8 *Id.*

9 *Id.* at 3.

Aurora's appeal also requested a hearing so it could have an opportunity to present evidence and argument to the Commissioner. A hearing was granted and the Commissioner appointed Jon Katchen to serve as the hearing officer. A hearing was conducted on January 10, 2012, in Anchorage, Alaska. At the hearing, Aurora was represented by Ed Jones, Aurora's President. Mr. Jones was accompanied by Bill Van Dyke, who serves as a consultant for Aurora, and by Paul Abokhair, who is a commercial manager for Apache Corporation.[10]

At the hearing, Mr. Jones did not present any new evidence. Instead he made four primary arguments: (1) unitization is the only reasonable and efficient way to do exploration and development work on these leases because the Cohoe Unit #1 well is located in such close proximity to the CIRI lease; (2) the Division's denial was based on a new policy of rejecting "exploration" units, which conflicts with DNR's past practice; (3) unitization is necessary because the leases would terminate and they could not conduct proposed drilling activity; and (4) unitization is in the state's best interest because it will lead to drilling and employment opportunities in the near term and the possible increase of gas supplies.

Mr. Jones stated that he agreed with the factual findings made in the Director's decision. He specifically agreed with the Division that to prove the existence of moveable hydrocarbons, Aurora would need to re-enter the well. Mr. Jones added that the leases that are the subject of this appeal overlie "an exploration prospect."

Mr. Jones disagreed with the Division's decision to the extent that it found that AOGCC drill permit was a prerequisite for unitization.

At the conclusion of the hearing, Aurora was offered an opportunity to supplement the record with additional evidence or briefing. This offer was respectfully declined.

III. LEGAL BACKGROUND

To properly understand unitization and why the state forms units, it is worth taking a step back to review Alaska's leasing process and examine how this process relates to unit formation.

A. The Primary Purpose of Leasing in Alaska: Timely Development

The state's paramount interest in leasing its land is to secure timely development of the state's natural resources.[11] To ensure timely production, Alaska statutes, DNR regulations, and Alaska's oil and gas leases mandate that an oil and gas lease automatically terminates if the lessee is not producing oil or gas when the primary term expires – assuming none of the

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[10] Apache has recently acquired an interest in these leases. Transcript of January 10, 2012 Hearing (Transcript) at 4.

[11] AS 38.05.180; *see also White v. State, Dep't of Natural Res.*, S-5499/5519 (Alaska March 6, 1996) (unpublished decision) (The purpose of Alaska's oil and gas leases "is to encourage production, not speculation by lessees who make the nominal lease payments and hold the leases without any real intention of conducting operations on them.").

conditions extending the life of the lease apply.[12] Thus, under state law, the state is ensured that the leased premises will be put into timely production from which the lessee will pay royalties and taxes or, if production has not occurred, the lease will automatically terminate at the end of the lease's primary term.

This principle, commonly referred to as "produce or lose," is axiomatic to oil and gas leasing throughout the country.[13] In Alaska, it is also well established that if an oil and gas lessee is unable or unwilling to produce after the primary term ends, the lease generally returns to the state and the state may pursue production through other means.[14]

B. Unitization is a Mechanism to Facilitate Timely, Efficient, and Responsible Development of State Resources

Non-producing leases can, however, be extended beyond their primary term in a few limited instances. In particular, state law, along with provisions in the state's oil and gas lease forms, keep non-producing leases alive in certain circumstances;[15] a non-producing lease will not automatically expire at the end of the primary term if the lessee (i) has drilled a well capable of producing in paying quantities, (ii) is in the process of diligently drilling a well on the expiration date of the lease that will be put into production, or (iii) has unitized the lease.[16]

Unitizing leases is the most widely employed mechanism in Alaska to extend non-producing leases beyond their primary term.[17] Under 11 AAC 83.303, DNR will approve a proposed unit agreement for oil and gas leases if such an agreement is found to be necessary to protect the public interest considering the provisions of AS 38.05.180(p) and the relevant unitization regulations (11 AAC 83.301-.395).

Alaska Statute 38.05.180(p) gives DNR authority to unitize "all or part of an oil and gas pool, field, or like area" to "conserve the natural resources" of that field or pool when "necessary or advisable in the public interest." Similarly, under AS 31.05.110, lessees may unitize "pools" with DNR's approval "[t]o prevent waste, or to assist in preventing waste, to insure greater

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12 *See, e.g.,* ADL 390364 and ADL 390365 at para. 4; AS 38.05.180(m) and 11 AAC 83.125 - .140, .180.

13 It is well established in oil and gas common law that "lessors should not be required to suffer a continuation of the lease after the expiration of the primary period merely for speculation purposes on the part of the lessees." *Garcia v. King*, 164 S.W.2d 509, 513 (Tex. 1942). *See generally* 3 H. Williams & C. Meyers, OIL & GAS LAW § 604 at 43-46 (2008).

14 *See* AS 38.05.180(m).

15 *See* AS 38.05.180(m); 11 AAC 83.125 -.145, 83.190.

16 *Id.*

17 11 AAC 83.190.

ultimate recovery of oil and gas, and to protect the correlative rights of persons owning interests in the tracts of land affected[.]"[18]

The legislature and DNR have defined a "pool" to mean "an underground reservoir containing, or appearing to contain, a common accumulation of oil or gas."[19] "[F]ield" means "a general area which is underlain or appears to be underlain by at least one pool and includes the underground reservoir containing oil or gas; and the words 'pool' and 'field' mean the same thing when only one underground reservoir is involved, but 'field' unlike 'pool' may relate to two or more pools."[20]

Within this framework, DNR's regulations provide that a "unit must encompass the minimum areas required to include all or part of one or more oil or gas reservoirs, or all or part of one or more potential hydrocarbon accumulations."[21]

A reservoir is defined as an "oil or gas accumulation *which has been discovered by drilling and evaluated by testing* and which is separate from any other accumulation of oil and gas."[22]

DNR defines a "potential hydrocarbon accumulation," to mean "any structural or stratigraphic entrapping mechanism *which has been reasonably defined and delineated through geophysical, geological, or other means* and which contains one or more intervals, zones, strata, or formation having the necessary physical characteristics to accumulate and prevent the escape of oil and gas[.]"[23]

When evaluating a unit application, DNR must make a finding, under 11 AAC 83.303(a), that considers whether unitization is necessary to protect the public interest in development and maximization of resources and is necessary to: (1) promote conservation;[24] (2) promote the prevention of economic and physical waste; and (3) provide for the protection of all parties of interest.

In applying these criteria to a unit application, DNR will, under 11 AAC 83.303(b), consider: (1) the environmental costs and benefits of unitization; (2) the geological and

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18 AS 31.05.110(a), (q).

19 AS 31.05.170(12); 11 AAC 88.185(23).

20 AS 31.05.170(5).

21 11 AAC 83.356(a).

22 11 AAC 83.395(6) (emphasis added).

23 11 AAC 83.395(5) (emphasis added). Under 11 AAC 83.356, a unit area must encompass "all or part of one or more oil or gas reservoirs, or all or part of one or more potential hydrocarbon accumulations."

24 Conservation means "maximizing efficient recovery of oil and gas and minimizing the adverse impacts on the surface and other resources[.]" 11 AAC 83.395(1).

engineering characteristics of the potential hydrocarbon accumulation or reservoir proposed for unitization; (3) prior exploration activities in the proposed unit area; (4) the applicant's plans for exploration or development of the unit area; (5) the economic costs and benefits to the state; and (6) any other relevant factors.

Thus, to justify a unit, the lessee should demonstrate that the leases contain a pool or field, that unitization will promote the efficient recovery of oil or gas, and the lessee's plan to move the unitized leases into production requires unitization to conserve the resource and prevent waste.

IV. DISCUSSION

This appeal centers on whether DNR should form a unit despite the lack of data demonstrating that the proposed area for unitization contains a "reservoir" or "potential hydrocarbon accumulation."

Aurora argues that DNR has the authority to form a unit in this situation and has been forming such units for over forty years. Aurora adds that forming the Cohoe Unit is in the state's best interest because if the company drills according to its proposed schedule and discovers commercial quantities of gas, and then moves into production, the state will receive royalty and tax revenue, jobs will be created, and the production will add to Southcentral gas supplies.

I affirm the Director's finding that it is "not in the state's interest to allow Aurora to retain the leases and benefit from the lease term extensions provided by unitization without having demonstrated the need for unitization."[25] What follows explains my decision in more detail.

A. Aurora Has Not Demonstrated That the Unit Area Overlies a Reservoir or Potential Hydrocarbon Accumulation

As discussed above, state law provides that a unit applicant must demonstrate that the leases sought to be unitized overlie "a pool, field, or like area."[26] DNR's regulations further specify that a unit area must encompass "all or part of one or more oil or gas reservoirs, or all or part of one or more potential hydrocarbon accumulations."[27] If an applicant can meet this threshold requirement, it must then demonstrate that unitization is necessary to "conserve the natural resources" of a pool or field.[28] Accordingly, consistent with AS 38.05 and AS 31.05, the intent of DNR's unitization regulations is to combine leases when there is a demonstrable probability that a producible oil or gas accumulation exists under the proposed unit area *and* unitization is necessary to promote conservation and prevent waste.

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25 Director's Decision at 10.

26 AS 38.05.180(p); 11 AAC 83.303(a).

27 11 AAC 83.356.

28 AS 38.05.180(p).

Here, Aurora's written appeal maintains that adequate data was submitted with the Division to demonstrate the existence of "a contiguous hydrocarbon bearing structure underlying several leases."[29]

Having considered Aurora's argument and the evidence, I find that the Division properly found that Aurora has not presented geological, geophysical and engineering data that demonstrates the presence of a reservoir or potential hydrocarbon accumulation, as those terms are defined in state law.

Specifically, data presented to the Division do not indicate "an underground reservoir containing, or appearing to contain, a common accumulation of oil or gas."[30] No well has been drilled and tested that discovered hydrocarbons in paying quantities on any of the leases contained in the unit application. The one well drilled and tested in the area was plugged and abandoned shortly after completion and was never certified as capable of producing in paying quantities. Indeed, the well tests conducted provide *no* evidence of a reservoir in the perforated zones; these tests produced gas cut salt water along with mud or sand, a small amount of gas with formation water, or failed altogether or produced only water.[31] Thus, the geological, geophysical and engineering evidence submitted by Aurora to the Division do not demonstrate the presence of a reservoir.

Aurora has also not presented data that show a "potential hydrocarbon accumulation . . . which has been reasonably defined and delineated through geophysical, geological, or other means."[32] The data presented by Aurora and reviewed by the Division do not indicate a probable accumulation of hydrocarbons underlying the proposed unit area because the data do not define and delineate a structural or stratigraphic entrapping mechanism capable of accumulating and preventing the escape of oil or gas within the unit boundary.[33] The Division specifically found that:

> Aurora submitted technical maps of prospective horizons within the Tyonek, Beluga, and Sterling formations, but the distribution of potential reservoirs can only be confirmed by drilling wells. The regional geological setting of noth-northeast-trending anticlinal structures sets up the potential for reservoir success

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29 Aurora's October 18, 2001 Appeal at 2.

30 *See* AS 31.05.170(12); 11 AAC 88.185(23).

31 Director's Decision at 6.

32 11 AAC 83.395(5) (emphasis added).

33 Even if there were data supporting the existence of a structural or stratigraphic trap, or a trapping mechanism consisting of a combination of structural and stratigraphic elements, capable of trapping and accumulating hydrocarbons, this does *not* mean a unit should be formed. Aurora would still need to show that the remaining the criteria set out in 11 AAC 83.303 support unit formation.

> throughout the Cook Inlet basin. Stratigraphic traps off major structures are subtle and difficult to identify especially given the discontinuous and thin beds of fluvial channels, most of which are below the resolution of 3-D seismic. . . . [Thus] further drilling would be required to delineate any potential reservoirs beyond the drainage areas in the surrounding leases.

On appeal to the Commissioner, Aurora did not present any evidence that contradicted the Division's findings that there is insufficient data to show the presence of an underground reservoir containing, or appearing to contain, a common accumulation of oil or gas.

In fact, during the hearing, Aurora largely agreed with the Division's findings. Mr. Jones was asked whether "there are movable hydrocarbons under these leases . . . or do you need to reenter the well and do testing?"[34] Mr. Jones replied: "We would need to reenter the well to do testing. You have technical information that indicates there is hydrocarbon there. You have old well logs. We have done a petrophysical analysis of that. It looks encouraging. . . . But you don't know till you have a well and you have a test, you have the gas coming to surface."[35] Mr. Jones later stated that the proposed unit area is an "exploration prospect."[36]

Mr. Jones was also asked during the hearing if he disagreed with any of the factual findings in the Director's decision. He responded that, other than the statement that Aurora needed to have an AOGCC permit to drill to form a unit, he did not disagree with the decision's technical findings.[37]

While future exploration activity may show that the area contains a reservoir or a potential hydrocarbon accumulation, the Division's decision denying Aurora's unit application properly found that the data submitted in support of the unit application "does not support unitization."

After reviewing the applicable law, the record in this appeal, and DNR's unitization decisions, I find that granting this unit application where no reservoir or potential hydrocarbon accumulation has been demonstrated is contrary to applicable regulations. Granting this unit without evidence of a reservoir or potential hydrocarbon accumulation does not promote the public interest in maximizing recovery of natural resources.[38]

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34 Transcript at 17.

35 In its appeal papers, Aurora stated that "[b]ecause the unit is in the exploration phase, there is limited engineering data at this time." Aurora's October 18, 2001 Appeal at 7.

36 Transcript at 29.

37 Transcript at 15.

38 Furthermore, granting the unit does not prevent waste because if there is no reservoir there can be no waste. And because Aurora owns all of the leases at issue, there is no threat to correlative rights.

In sum, forming a unit without Aurora showing the presence of "an underground reservoir containing, or appearing to contain, a common accumulation of oil or gas"[39] or a "potential hydrocarbon accumulation," does not advance the public's interest in leasing state lands for oil and gas in Alaska, which is the timely and responsible development and production of state resources. It also conflicts with Alaska's unitization statutes and DNR's regulations, which contemplate the existence of a pool or field that needs to be unitized to allow for greater ultimate recovery, the prevention of waste, and the protection of correlative rights.

B. The Fact that the Leases Are at the End of Their Lease Terms is Not a Relevant Consideration for this Unit Application

Aurora offered two arguments in favor of unit formation, both based on the fact that the leases at issue are at the end of their lease terms. But no statute or regulation provides lease expiration as a basis for unitizing leases, nor does the expiration of these leases alone justify forming a unit.

First, Aurora argues that if the public interest is advanced by securing timely drilling and development, the best way to get timely development is by forming the unit and allowing Aurora to complete its work instead of releasing the land with no promise of having anyone purchase the leases or, even if they are acquired, timely developing them.

This argument overlooks the critical statutory and regulatory criterion for unitization: a pool or field that underlies more than one lease. As discussed above, unitization is not designed to give a lessee extra time to determine whether a pool or field exists. It utterly distorts the logic behind unitization to form a unit when data do not demonstrate the presence of a pool or field.

Next, Aurora argues that "the Division has recently taken the view that unitization is not needed for exploration . . . . This is a marked change in state policy . . . The Division's new policy runs counter to over forty years of past practice by the Division and its predecessor agencies."[40]

DNR makes each unit decision based on the application before it and the applicable statutes and regulations. Each application and decision is unique.

In any case, a review of DNR's unitization decisions does not support Aurora's assertion that this decision represents a change in longstanding policy.[41] DNR's practice and this decision are consistent with the principles of unitization.

The fact that Aurora's leases are at the end of their lease terms has no bearing on whether the leases include a pool or reservoir, or whether a unit is in the public interest and would

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39 AS 31.05.170(12); 11 AAC 88.185(23).

40 Aurora's October 18, 2001 Appeal at 3.

41 *See, e.g.,* August 29, 1985, Decision and Findings of the Commissioner, Department of Natural Resources, Arsenault Unit – Application for Unit Approval.

promote conservation, prevent waste, and protect the state and other interested parties. Forming such a unit because Aurora's leases are expiring would be contrary to the state's interest in promoting diligent exploration by its leaseholders. Thus, there are compelling policy reasons for rejecting a unit application in this situation.

In particular, unitizing these leases when Aurora lacks data to show the existence of a pool or field effectively rewards Aurora for being dilatory during the lease's primary term by adding at least five additional years to the lease term (11 AAC 83.336(a)). Unitizing state leases in this situation would make the primary term of the lease meaningless. If these non-producing leases that have not been adequately explored during the primary term can be unitized on eve of their expiration date, and then remain in force through unitization, this essentially circumvents the lessee's statutory and contractual obligation to explore and develop during the primary term of the lease. Indeed, unitizing unexplored or underexplored leases strips the primary term of any meaning and removes any consequences for the failure to explore. Why explore during the primary term if DNR will unitize to allow lessees extra time to discover whether a pool or field underlies their leases?

Similarly, unitizing leases in this situation would create a troublesome practice that undermines the public interest because it incentivizes lessees to wait until the eve of their lease expiration date, which is often ten years after the lease was acquired, and file a unitization application with the Division with a promise in year eleven, twelve, or thirteen, to explore, delineate, and develop. To grant a unit application because the leases are at the end of their term could encourage lessees to wait until the eve of lease expiration and then apply for a unit with promises to conduct the exploration that the lessee could have been doing throughout the lease term.

Indeed, this is exactly what happened here. Aurora did not conduct any exploration activities on its state leases during their seven-year primary term. Instead, Aurora proposed unitizing the leases, which would then allow them to commit the capital to drill wells and shoot 3-D seismic to determine if a reservoir exists *after* the primary term had expired.

In sum, unitization can have the effect of extending lease terms, but no statute or regulation suggests that extending leases is a purpose or justification for unitization. It is not the intent of DNR's unitization regulations to facilitate the extension of expiring leases, particularly when little or no geological, geophysical, or other exploratory work has been performed on the leases to provide the information necessary to justify a unit. Consequently, DNR may deny a unit if the lessee cannot demonstrate with geological, geophysical and engineering data that there is a reservoir or a potential hydrocarbon accumulation that has been reasonably defined and delineated in the proposed unit boundary.

C. Aurora's Remaining Arguments Do Not Change the Outcome of This Appeal

Aurora's remaining arguments hinge on whether the Division properly applied the criteria set out in 11 AAC 83.303. There is no need to address these arguments because Aurora has not demonstrated that a reservoir or potential hydrocarbon accumulation exists in the unit area for DNR to even consider whether granting a unit would be in the public interest and would

promote conservation, prevent waste, and protect the state's and other parties' interests. That said, I agree with Aurora that a unit application does not need to contain an AOGCC drill permit.

V. DECISION AND FINDINGS

1. Aurora has failed to demonstrate the existence of a "reservoir" or a "potential hydrocarbon accumulation" as required by AS 38.05.180(p) and 11 AAC 83.303.

2. Aurora's appeal is denied and I affirm the Director's finding that it is "not in the state's interest to allow Aurora to retain the leases and benefit from the lease term extensions provided by unitization without having demonstrated the need for unitization."

3. It is not the intent of unitization under state law, and it also does not advance the public interest, to facilitate the extension of expiring leases through unitization when there is little or no geological, geophysical, or other exploratory work that demonstrates the existence of a reservoir or potential hydrocarbon accumulation as defined by DNR's regulations.

APPEAL TO COURT: This Commissioner's Decision is the final administrative order and decision of the department for the purpose of an appeal to the superior court. An appellant affected by this final administrative order and decision may appeal to superior court within 30 days in accordance with the Alaska Rules of Court and to the extent permitted by applicable law.

Daniel S. Sullivan
Commissioner, Department of
Natural Resources

3 May 2012
Date

cc: W. C. Barron, Director, Division of Oil and Gas